

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0600
SALES TAX
For Years 1999 and 2000**

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ISSUES

I. Sales Tax—Imposed on materials used on construction jobs

Authority: 45 IAC 2.2-3-12(c)

Taxpayer protests the imposition of sales tax on materials used on construction jobs but not incorporated into the final product.

STATEMENT OF FACTS

Taxpayer acts as a fabricator of tangible personal property with or without related installation. Taxpayer also performs jobs for improvement to realty and has performed some smaller repair jobs. Taxpayer considers itself to be a contractor. A large portion of taxpayer's work has been exempt due to customer use in direct production. A majority of taxpayer's jobs are done through lump-sum contracts.

DISCUSSION

I. Sales Tax—Imposed on materials used on construction jobs

The transactions in question all revolve around the renting of tangible personal property for use on the construction site. This property includes booms, pick boards, and scaffolding, none of which were consumed or incorporated into the final product during the construction process. Taxpayer claims that because its customers issue exemption certificates, those certificates should cover taxpayer's rental of equipment used to finish its jobs.

However, 45 IAC 2.2-3-12(c) provides an exception to the general applicability of exemption certificates. It reads, in relevant part:

Utilities, machinery, tools, ... equipment, or any other items used or consumed by the contractor *and which do not become a part of the improvement to real estate* are not exempt regardless of the exempt status of the person for whom the contract is performed. (*Emphasis added*).

The booms, pick boards, and scaffolds in question did not become a part of the improvement to the real estate upon which construction was taking place, and taxpayer has not advanced the argument that they were. Therefore, taxpayer has failed to provide a basis for taking the transactions out of the governing regulation, and the transactions are therefore subject to applicable sales tax.

FINDINGS

The taxpayer is respectfully denied.

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